

ALAN WINTER
ELIZABETH FREEMAN ET AL.

IBLA 75-653
IBLA 76-14

Decided January 21, 1976

Appeals from decisions of the Medford District Office, Bureau of Land Management, to file a negative declaration for the East Fork Williams Creek timber sale proposal, and to include the Robinson Gulch Tract (Tract #76-51) in Timber Sale Notice dated July 2, 1975.

Set aside and remanded.

1. National Environmental Policy Act of 1969: Generally--Rules of Practice: Appeals: Dismissal

On appeals from decisions to proceed with proposed timber sales, when the District Manager tentatively proposes to withdraw the tracts from sale plans in order more fully to examine appellants' allegations, and material submitted in a related appeal, the decisions will be set aside and the cases remanded for further consideration.

APPEARANCES: Elizabeth Freeman et al., pro se; Alan Winter, pro se; Donald P. Lawton, Esq., Office of the Regional Solicitor, Portland, Oregon, U.S. Department of the Interior, for appellee.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

On June 16, 1975, the Medford District Manager, Bureau of Land Management, announced that the Robinson Gulch Tract (Medford Tract #76-51) was included in the Fiscal Year 1976 Timber Sale Plan and would be sold as proposed. Elizabeth Freeman and others 1/ had previously protested the proposal, and an appeal from the protest was

1/ In addition to Elizabeth Freeman, the other appellants in IBLA 76-14 are Jean Tangeman, Ruth Mountaingrove, Donna Rose, Eleanor Jaeger, Frances Rominski, Patti Bock, Mary Lois Anderson, Richard W. Corbin, Carl Wittman, and Allan Troxler.

dismissed as premature. Carl Wittman, 16 IBLA 188 (1974). On July 3, 1975, appellants filed this appeal requesting that the Robinson Gulch Tract not be offered for sale pending completion of an Environmental Impact Statement (EIS) pursuant to the provisions of the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.* (1970). The appellants' statement of reasons contained detailed factual allegations of the nature and seriousness of the environmental impact of the proposed sale.

On April 9, 1975, the Medford District Office adopted an Environmental Analysis Report for the East Fork Williams Creek proposed timber sale containing a negative declaration, *i.e.*, concluding that the project under consideration was not a "major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(c) (1970). Alan Winter, a resident in the Williams area, protested the decision not to prepare an EIS as provided for by section 102(2)(c) of the National Environmental Policy Act, on May 8, 1975. On June 9, 1975, Mr. Winter appealed the denial of his protest.

The District Manager initially responded with a motion to dismiss the appeal as premature, since the plans for the proposed sale were not yet final. A brief in support of that position was filed.

[1] The District Manager later responded to appellant Winter's appeal, IBLA 75-653, by announcing that BLM is currently reconsidering its East Fork Williams Creek proposal, and by moving that the Board remand the case for further consideration consistent with the remand in Arthur Downing, IBLA 76-68, by order dated October 21, 1975, and consistent with proposed reconsideration of the Robinson Gulch appeal.

In his response to the Robinson Gulch appeal, IBLA 76-14, the District Manager indicated that various contentions made in the statement of reasons were not made in the initial protest, and that those contentions warrant further study and consultation with appellants Freeman *et al.* prior to the timber sale. He manifested his desire to reach an accommodation with appellants regarding the tract at issue. The District Manager further indicated that his office would like to reevaluate the Robinson Gulch sale in light of issues raised in a related appeal challenging the Medford District timber sale program, Arthur Downing, IBLA 76-68.

Appellants in both cases oppose the remand motions by reciting that they have been opposing the timber cuts for two years, that

the Medford District Office has continuously disregarded their assertions of environmental damage, and that the Environmental Analysis Reports remain inadequate. They request that this office direct the Medford District Office to prepare EIS's on the East Fork Williams Creek and Robinson Gulch proposals.

While we sympathize with appellants' frustration 2/ over final resolution of the timber sale proposals, and the time and effort necessary to maintain opposition to the projects, we cannot rule on appellants' contentions in the absence of final timber sale plans. As long as the Medford District Office indicates its willingness to restudy and perhaps modify or abandon the proposals, the issues on appeal may be mooted, and the action we are asked to order may be rendered superfluous.

We grant the District Manager's requests and remand the cases for reconsideration in light of the material and issues set forth in the appeal briefs. See, e.g., Charles E. Cook Lumber Co., 3 IBLA 443 (1971); John H. Rutherford, 2 IBLA 446 (1971). However, this remand is granted upon the condition that appellants will be served a copy of any future decision to include the subject Robinson Gulch Tract or the East Fork Williams Creek lands (or any portion of either) in a scheduled timber sale without the prior accomplishment of an EIS.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded for reconsideration by the District Manager.

Frederick Fishman
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ If appellants feel compelled to take appeals from subsequent District Office decisions on these tracts, they may adopt by reference the portions of their briefs of record that are still relevant.

